

CAUSE NO. 067-319587-20

BAYLOR UNIVERSITY, and
SOUTHWESTERN BAPTIST
THEOLOGICAL SEMINARY,
Plaintiffs,

v.

HAROLD E. RILEY FOUNDATION,
and MIKE C. HUGHES,
Defendants.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

OF TARRANT COUNTY, TEXAS

67TH JUDICIAL DISTRICT

Settlement Term Sheet

The Parties to this Settlement Term Sheet, being BAYLOR UNIVERSITY (“**Baylor**”), SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY (“**SWBTS**”), HAROLD E. RILEY FOUNDATION, (“**Foundation**”), the ATTORNEY GENERAL OF THE STATE OF TEXAS (“**AG**”), MIKE C. HUGHES (“**Hughes**”), CHARLES HOTT (“**Hott**”), and DAVID AUGUST “AUGIE” BOTO (“**Boto**”) (with Hughes, Hott, and Boto, collectively, the “**HRF TEs**”), hereby agree to settle the above cause and agree that the material terms of such settlement are set forth in this settlement terms sheet which shall bind all parties hereto:

1. Each of Hott, Boto, and Hughes, individually and in his respective capacity as trustee of Foundation, warrants and represents to Baylor and SWBTS that on the date hereof: (i) a complete copy of the Certificate of Formation and Bylaws of the Foundation (the “**Current Governance Documents**”) is attached hereto as Exhibit A; (ii) the Current Governance Documents have not been supplemented, amended, or modified since their adoption; and (iii) the only current members of the board of Trustees of the Foundation (the “**HERF Board**”) are the HRF TEs.
2. Each of Hott, Boto and Hughes, acting in their respective capacities as the sole trustees on the Foundation Board shall, by unanimous written consent in lieu of a meeting of the Foundation Board, as and when directed, and in form and substance specified by Baylor and SWBTS shall: (1) appoint to the HERF Board all of the four individuals selected and identified by Baylor and SWBTS to serve as trustees on the HERF Board (collectively, the “**Replacement TEs**”), and (2) resign as trustees of the Foundation. The appointment and resignation of trustees shall be accomplished in compliance with the Foundation’s Bylaws. The HRF TEs shall also concurrently resign (in writing) from all non-employee positions, paid and non-paid, held with the Foundation, including, without limitation, officer, Individual Membership, and trustee positions on the HERF Board as, when, and in the manner requested by Baylor and SWBTS, and shall execute all documents required, requested, or deemed necessary by Baylor and/or SWBTS to evidence such appointments and resignations. In connection with the foregoing replacement of trustees, the employment of Hughes and Hott with the Foundation will be terminated by mutual

- agreement. The Parties agree that, within one (1) business day of execution of this Settlement Term Sheet, a letter substantially in the form attached hereto as Exhibit B will be sent to the Departments of Insurance for Colorado, Louisiana, Mississippi, and Texas.
3. All Parties shall take all action reasonably required to effectuate the agreement contemplated in this Settlement Term Sheet.
 4. Prior to the appointment of the Replacement TEs as provided in Section 2 above, each of the HRF TEs agrees that he will not take any action to change or modify the Current Governance Documents in any manner, including to expand the number of trustees of the HERF Board, or to appoint any new Trustees to the HERF Board, except as expressly permitted in Section 2, or take or cause the Foundation to take any action contrary to the terms set forth in this Settlement Term Sheet.
 5. The HRF TEs, and each one of them, is prohibited from, agrees not to and shall not engage in any and all fundraising or other efforts that are designed to or will: (i) discourage third parties from making donations or philanthropic gifts or grants of funds or other property to SWBTS or Baylor, or (ii) divert such donations, gifts, or grants of such funds to a third party instead of SWBTS or Baylor.
 6. In furtherance of their commitment not to divert donations, gifts, or grants of funds to a third party instead of SWBTS or Baylor, each of the HRF TEs agrees not to seek or accept any position of employment from or appointment in any fiduciary capacity, whether as an officer, director, or trustee, at any Texas public and/or private nonprofit charitable organization, or any of the following entities of the Southern Baptist Convention ("SBC"): (i) Executive Committee of the SBC, (ii) International Mission Board, (iii) North American Mission Board, (iv) LifeWay Christian Resources, (v) GuideStone Financial Resources (vi) Southern Baptist Theological Seminary, (vii) SWBTS, (viii) New Orleans Baptist Theological Seminary, (ix) Southeastern Baptist Theological Seminary, (x) Midwestern Baptist Theological Seminary, (xi) the Ethics and Religious Liberty Commission, and (xii) Gateway Baptist Theological Seminary.
 7. Hott represents and agrees that he is no longer a trustee of SWBTS.
 8. All books, records, equipment, vehicles, and property (including without limitation all computers, servers, digital and electronic copies and files) of any kind or character of the Foundation or owned by the Foundation shall be delivered on or before closing to Baylor and SWBTS, in the manner requested by Baylor and SWBTS, and in no event no later than February 8, 2021. This further includes without limitation, all titles, keys, codes, passwords, login information, and contact information for any employees, service provider, vendor, financial institutions, credit cards, state regulatory accounts, or insurers, and all accounting records, bank statements, checkbooks, executed leases, insurance policies, accounts payable and accounts receivable records. The foregoing in this Section 8 includes without limitation all forms of such property and assets, whether tangible, electronic or digital, and whether accessible online on the internet or via cloud storage. In that regard, and from time to time as requested, the HRF TEs, and each of them, shall upon request, execute such authorizations and instruction letters, participate in Medallion Signature verification, and any other document or process necessary to transfer such assets to Baylor and SWBTS, pursuant to their direction. Any digital or

electronic versions maintained by the HRF TEs, or any of them, shall be delivered to Baylor and SWBTS promptly. The HRF TEs will have an opportunity to copy personal contacts and personal information contained on the Foundation's computers.

The HRF TEs shall provide an accounting and a summary of the financial assets and liabilities of the Foundation as of the date of execution of this Settlement Terms sheet on or before February 8, 2021, and in connection therewith disclose the location and amount of all Foundation assets and financial and deposit accounts, and further, in connection therewith, as well as any supporting documentation for such summary. The HRF TEs shall disclose their opinions as to all known, threatened, or suspected claims or causes of action by or against the Foundation as of the date of execution of this Settlement Terms sheet. The Parties stipulate and agree that any such disclosure by the HRF TEs shall only be their opinion, and shall not be an admission of or binding upon the Foundation, nor shall it be evidence of the appropriateness or actual liability of the Foundation for any such disclosed claim. The Parties agree that any claims asserted by or against the Foundation in Case No. 2020CV31721, styled *Harold E. Riley Foundation v. Claus et al.*, pending in the District Court of Arapahoe County, Colorado, shall not be resolved unless all claims that have been asserted or could have been asserted against Hughes, Hott, or Boto in such action are fully and finally released and dismissed with prejudice.

9. Except as otherwise provided in this Settlement Term Sheet, from and after 3:30 pm CST on January 29, 2021, the Foundation shall not and has not initiated any payment or transfer of funds of any kind to any person, law firm, or entity for any purpose. From and after 3:30 pm CST on January 29, 2021, the Foundation shall not and has not initiated the assignment, delivery, disbursement, sale, liquidation, withdrawal, loan, mortgage, or transfer of any funds or assets of the Foundation to any person or entity, including the HRF TEs, without the consent of both Baylor and SWBTS. Each of the HRF TEs shall certify to that fact in writing. In this regard, from and after January 29, 2021, each of the HRF TEs waive any right to any payment from or on behalf of the Foundation for trustee service, employment, or otherwise. Baylor and SWBTS shall cause the Foundation to make payment to LeeAnne DiLavore for ordinary payroll for the January 31, 2021 payroll period. All obligations of the Foundation to pay for tuition for the spouse of LeeAnne DiLavore shall terminate and cease as of January 31, 2021. It is expected that the employment of LeeAnne DiLavore shall extend for a minimum of two months at the discretion of Foundation, until the end of March 2021, during which time she shall continue to serve as the Administrative Assistant and, in part, aid in the transition, accumulation and securing of the property, books and records of the Foundation. For those services she will be paid her normal salary of \$1232.28, bi-weekly, along with her health and dental insurance at the rate of \$1254.51 per month, at which time she shall transition at her cost to other coverage of her choice, and the Foundation shall have no further obligations with respect thereto. At such time as the Foundation determines that it no longer needs the services of LeeAnne DiLavore, it is anticipated that she will be terminated without cause.
10. In addition, the Foundation shall pay the regular monthly accounting fees to the Saville Dodgen accounting firm for November and December 2020, in the amount of \$4,000.00;

for January 2021, in the amount of \$3,500.00; and for February 2021, in the amount of no more than \$3500. The Foundation shall pay the following legal invoices that were submitted to the Foundation by February 1, 2021:

Vendor	Amount	Date of Invoice	Notes
Hall & Evans	\$6,968.75	1/26/2021	Regulatory legal advice
Crux Legal	\$10,183.50	1/29/2021	Local counsel for Mike Hughes in Colorado action
Brackett & Ellis	\$4,820.02	1/31/2021	Representation of Mike Hughes in Colorado action
Wheeler Trigg & O'Donnell	\$52,496.93	1/31/2021	Local counsel for Foundation in Colorado action
Thompson & Knight LLP	\$2,640.00	2/1/2021	Tax advice
Thompson & Knight LLP	\$10,744.50	2/1/2021	Litigation matter
Staricka Law, PLLC	\$5,952.00	2/1/2021	Litigation matter

The Foundation will consider, in its discretion, the payment of any additional legal invoices that are submitted to the Foundation by no later than February 15, 2021.

11. Other than stabilization of any long positions, or closing out of any short positions of the Foundation of any individual stock holdings (and only then with express written consent of Baylor and SWBTS), there shall be no trading, or sales of any equity or other financial interests or assets/liabilities, option or other interests of or for the Foundation from and after January 29, 2021, at 3:30 pm CST.
12. Conditioned on satisfaction of Sections 1-11 above by the Foundation and the HRF TEs:
 - a. Baylor, SWBTS, the AG (as to the claims in or related to the Intervention only), and the Foundation shall fully and finally release the HRF TEs based on any events that have occurred prior to the date of execution of the final Settlement Agreement to be executed on or before closing. The Parties agree and acknowledge that any release by the Foundation must be executed by the Replacement TEs. The Parties agree to cooperate on the logistics of the execution process such that any release by the Foundation is executed by the Replacement TEs. Such releases shall be customary, broad, and complete releases.
 - b. The HRF TEs shall fully and finally release Baylor, SWBTS, and the Foundation based on any events that have occurred prior to the date of execution of the final Settlement Agreement to be executed on or before closing. Such releases shall be customary, broad, and complete releases. For the avoidance of doubt, the release shall also serve as a waiver of any indemnity rights or claim from or against the Foundation, whether asserted before or after the execution of the Release.
 - c. Any and all claims in the above-styled lawsuit as to Defendant Hughes shall be dismissed with prejudice, but the Foundation shall remain as a party to this pending case for the purpose of accommodation of the transition, compliance with this Agreement, and transfer of assets and any disbursement or dissolution of the Foundation, and it will be dismissed in full within a reasonable time. In connection therewith, the Thompson Knight firm shall withdraw as counsel for the Foundation and will be replaced by other counsel, as determined by the

Replacement TEs.

13. The HRF TEs agree to unconditionally cooperate fully at all times from and after the date hereof with respect to any of the matters described herein, with tax filings, regulatory filings and the pursuance of any matters with state regulators of any state, including without limitation, any matter required for regulatory approval of the transfer of control of the Foundation, to the extent required for any existing or future Form A process or otherwise, and to execute such further resignation, instructions, consents, bills of sale, agreements, releases, assumptions, notifications, or any other documents as may be requested for the purpose of giving effect to, evidencing or giving notice of the matters evidenced by this Agreement, or relative to the Foundation and the transfer, and transfer of control thereof, or that otherwise effectuate the terms and spirit of this Agreement. By executing this Settlement Term Sheet, no Party concedes any legal or factual contentions of any other Party, but specifically denies same and enters into this Settlement Term Sheet solely to terminate and settle any and all disputes in an effort to minimize costs, expenses, attorney's fees, and, most of all, for peace.
14. The HRF TEs agree to sign and deliver such instruction letters as may be requested by Baylor, SWBTS, or the HERF Board members appointed as provided in Section 2 above, in a form suitable to the Baylor and SWBTS, to Interactive Brokers, First Financial Trust Asset Management, Frost Bank, Frost Brokerage, Guidestone Funds, First Financial Bank, and any other financial institution that holds any Foundation assets.
15. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.
16. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party, which fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded.
17. No supplement, modification, waiver, or termination of this Agreement or any provisions hereof shall be binding unless executed in writing by all parties hereto. No Waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
18. Any number of counterparts of this Agreement may be executed. Each counterpart will be deemed to be an original instrument and all counterparts taken together will constitute one agreement.
19. This Agreement will be governed by the laws of the State of Texas, without giving effect to principles of conflict of laws of the State of Texas. Exclusive venue and jurisdiction for any dispute relating to this suit or this settlement shall be in Tarrant County, Texas.
20. The material terms of settlement are set forth in this Agreement, and this Agreement shall be binding. However, more formal and comprehensive documents may subsequently be provided and agreed upon in order to more fully effectuate this Agreement. The Parties agree to negotiate in good faith a final Settlement Agreement, along with all ancillary documents necessary to effectuate the terms of this term sheet.

Dated: 2/6/21

AGREED:

BAYLOR UNIVERSITY ("Baylor")

By: Sandra S. Brumby

Its: President

SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY ("SWBTS")

By: _____

Its: _____

HAROLD E. RILEY FOUNDATION ("Foundation")

By: _____

Its: _____

MIKE C. HUGHES ("Hughes")

Charles Hott ("Hott")

D. August Boto ("Boto")

The Attorney General of the State of Texas

By: /s/ Mary T. Henderson

Mary T. Henderson
Senior Attorney for Charitable Trusts
Assistant Attorney General
Financial Litigation and Charitable Trusts Division

Dated: FEBRUARY 5, 2021

AGREED:

BAYLOR UNIVERSITY ("Baylor")

By: _____

Its: _____

SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY ("SWBTS")

By:  _____

Its: PRESIDENT _____

HAROLD E. RILEY FOUNDATION ("Foundation")

By: _____

Its: _____

MIKE C. HUGHES ("Hughes")

Charles Hott ("Hott")

D. August Boto ("Boto")

The Attorney General of the State of Texas

By: /s/ Mary T. Henderson _____

Mary T. Henderson

Senior Attorney for Charitable Trusts

Assistant Attorney General

Financial Litigation and Charitable Trusts Division

Dated: 02/05/2021

AGREED:

BAYLOR UNIVERSITY ("Baylor")

By: _____

Its: _____

SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY ("SWBTS")

By: _____

Its: _____

HAROLD E. RILEY FOUNDATION ("Foundation")

By: Mr. C. J.

Its: President

02/05/2021

5:00 PM (MCH)

MIKE C. HUGHES ("Hughes")

Charles Hott ("Hott")

D. August Boto ("Boto")

The Attorney General of the State of Texas

By: /s/ Mary T. Henderson

Mary T. Henderson
Senior Attorney for Charitable Trusts
Assistant Attorney General
Financial Litigation and Charitable Trusts Division

Dated: 02/05/2021

AGREED:

BAYLOR UNIVERSITY ("Baylor")

By: _____

Its: _____

SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY ("SWBTS")

By: _____

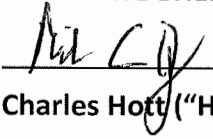
Its: _____

HAROLD E. RILEY FOUNDATION ("Foundation")

By: _____

Its: _____

MIKE C. HUGHES ("Hughes")



Charles Hott ("Hott")

D. August Boto ("Boto")

The Attorney General of the State of Texas

By: /s/ Mary T. Henderson

Mary T. Henderson
Senior Attorney for Charitable Trusts
Assistant Attorney General
Financial Litigation and Charitable Trusts Division

Dated: 2-5-2021

AGREED:

BAYLOR UNIVERSITY ("Baylor")

By: _____

Its: _____

SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY ("SWBTS")

By: _____

Its: _____

HAROLD E. RILEY FOUNDATION ("Foundation")

By: _____

Its: _____

MIKE C. HUGHES ("Hughes")

Charles Hott ("Hott")

Charles Hott

D. August Boto ("Boto")

The Attorney General of the State of Texas

By: /s/ Mary T. Henderson

Mary T. Henderson

Senior Attorney for Charitable Trusts

Assistant Attorney General

Financial Litigation and Charitable Trusts Division

Dated: 2/5/21

AGREED:

BAYLOR UNIVERSITY ("Baylor")

By: _____

Its: _____

SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY ("SWBTS")

By: _____

Its: _____

HAROLD E. RILEY FOUNDATION ("Foundation")

By: _____

Its: _____

MIKE C. HUGHES ("Hughes")

Charles Hott ("Hott")

D. August Boto ("Boto")

D. August Boto

The Attorney General of the State of Texas

By: */s/ Mary T. Henderson*

Mary T. Henderson
Senior Attorney for Charitable Trusts
Assistant Attorney General
Financial Litigation and Charitable Trusts Division